

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY, a Washington municipal
corporation,

Plaintiffs,

v.

TRAVELERS INDEMNITY COMPANY, a
Connecticut corporation; AETNA
CASUALTY AND SURETY COMPANY, a
Connecticut corporation; HARTFORD
ACCIDENT AND INDEMNITY
COMPANY, a Connecticut corporation;
PROVIDENCE WASHINGTON
INSURANCE COMPANY, a Rhode Island
corporation; AMERICAN HOME
ASSURANCE COMPANY, a New York
corporation,

Defendants.

No. 14-cv-1957-MJP

DECLARATION OF JOHN C.
BJORKMAN IN SUPPORT OF
KING COUNTY'S MOTION
FOR SUMMARY JUDGMENT ON
BAD FAITH FAILURE TO
DEFEND AGAINST DEFENDANT
PROVIDENCE

I, John C. Bjorkman, hereby state that:

1. I am counsel for Plaintiff King County. I make this declaration in support of
King County's Motion for Summary Judgment on Bad Faith Failure to Defend Against
Providence.

2. I certify that I have personal knowledge of the matters stated in this
declaration.

DECLARATION OF JOHN C. BJORKMAN
IN SUPPORT OF KING COUNTY'S MOTION
FOR SUMMARY JUDGMENT ON
BAD FAITH FAILURE TO DEFEND
AGAINST DEFENDANT PROVIDENCE - 1

1 3. Attached as **Exhibit A** is a true and correct copy of the July 19, 2013 letter I
2 signed and directed my staff to mail to Providence tendering the defense of the suits
3 described below and in the declaration of William E. Blakney. I directed my staff to send
4 the letter certified mail, and a copy of Providence's signed acknowledgment is attached as
5 **Exhibit B**. I directed my staff to send this tender at the same time King County tendered
6 the same suits to dozens of its other insurance carriers.

7 4. The underlying suits include a United States Environmental Protection Agency
8 ("EPA") and Washington Department of Ecology ("Ecology") joint enforcement action
9 described in the declaration of William E. Blakney. King County continues to incur
10 defense costs for this suit.

11 5. King County is also engaged in a litigation-style allocation process
12 ("Allocation Case") among King County and 44 other parties seeking to divide up the past
13 investigation costs and future cleanup cost obligations to EPA and Ecology for the Lower
14 Duwamish Waterway Superfund Site ("Lower Duwamish"). King County has and
15 continues to incur defense costs for this suit. I am one of the attorneys representing the
16 County in this suit.

17 6. King County tendered an ongoing enforcement action for the East Waterway
18 operable unit of the Harbor Island Superfund site ("East Waterway"), a separate (though
19 adjoining) Superfund Site and cleanup. Mr. Blakney also describes this site in his
20 declaration. The County has and continues to incur defense costs for this suit.

21 7. King County tendered two previously settled lawsuits arising out of "Early
22 Action Area" cleanup actions located within, and forming a part of, the Lower Duwamish
23 Waterway Superfund Site. I worked on the defense of these cases which is now
24 concluded.

25
26
DECLARATION OF JOHN C. BJORKMAN
IN SUPPORT OF KING COUNTY'S MOTION
FOR SUMMARY JUDGMENT ON
BAD FAITH FAILURE TO DEFEND
AGAINST DEFENDANT PROVIDENCE - 2

1 8. Along with the July 18, 2013 tender (Exhibit A), I sent Providence information
2 and copies of documents on a CD related to the underlying suits in order to aid Providence
3 in making a defense determination. Attached to this declaration are true and correct
4 copies of the key documents sent to Providence which include: (a) the applicable
5 insurance policy (Exhibit 1 to the Declaration of Jennifer Hills); (b) Ecology's Lower
6 Duwamish notice letter formally stating its decision that the County was potentially liable
7 for cleanup costs (**Exhibit C**); (c) an EPA and Ecology administrative order for the Lower
8 Duwamish compelling the initial study of the scope and extent of contamination and
9 requiring the development of remedial alternatives (**Exhibit D**); (d) the relevant notice
10 letter for East Waterway (**Exhibit E**); and (e) the two Early Action suits and settlements
11 (**Exhibit F**).

12 9. The tender letter I sent (Exhibit A) also included a description of the
13 Allocation Case, the process for which we were negotiating at that time. The Allocation
14 Case did not formally commence until April 2014.

15 10. Providence acknowledged receipt of tender by way of a letter dated July 29,
16 2013. A true and correct copy of this letter is attached as **Exhibit G**. In this letter,
17 Providence requested additional information on the timing and nature of the activities
18 giving rise to the underlying suit and the name of an appropriate contact at King County.

19 11. Attached as **Exhibit H** is a true and correct copy of King County's
20 consolidated response to questions from its various insurers dated September 11, 2013. In
21 this correspondence, King County provided answers to Providence's requests for
22 additional information (pages 1-2). This response further identified King County's
23 attorneys as the appropriate contact for Providence (page 6). I directed my staff to send
24 this correspondence to Providence and the County's other insurance carriers.

25
26
DECLARATION OF JOHN C. BJORKMAN
IN SUPPORT OF KING COUNTY'S MOTION
FOR SUMMARY JUDGMENT ON
BAD FAITH FAILURE TO DEFEND
AGAINST DEFENDANT PROVIDENCE - 3

12. I provided Providence with regular updates on the suits between September 2013 and the filing of this action. Copies of these communications are attached as **Exhibit I**. During this time King County received no substantive communication from Providence. Attached as **Exhibit J** are true and correct copies of the post-July 2013 communications to and from Providence up to the filing of this action.

13. Between 2013 and 2014, three other carriers agreed to defend King County. True and correct copies of their decision letters are attached as **Exhibit K**. I had previously directed my staff to send to these three carriers similar tender letters as the one sent to Providence (Exhibit A) and the same information and copies of documents as were sent to Providence on the CD (see paragraph 8 above). I also directed my staff to send the September 11, 2013 consolidated response to questions (Exhibit H) and many of the follow up status communications (Exhibit I). These carriers were apparently able to correctly determine their defense obligation with the information provided.

14. Despite recognizing their duty to defend, two of these carriers have not yet paid any defense costs as of the date of this declaration. The third paid a portion of the County's defense costs but now seeks reimbursement claiming the effect of a prior settlement agreement between the County and that insurer. See, Continental Casualty Company v. King County, No. 2:15-cv-797 (W.D. Wash. May 21, 2015). While this suit has been filed, plaintiff has not yet served it as the parties continue to negotiate a resolution.

I declare under penalty of perjury that the foregoing is true and correct:

EXECUTED this 6th day of August, 2015 at Seattle, Washington.

/s/ John C. Bjorkman

John C. Bjorkman

Attorney for Plaintiff King County

DECLARATION OF JOHN C. BJORKMAN
IN SUPPORT OF KING COUNTY'S MOTION
FOR SUMMARY JUDGMENT ON
BAD FAITH FAILURE TO DEFEND
AGAINST DEFENDANT PROVIDENCE - 4

CERTIFICATE OF SERVICE

I hereby certify I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Attorney for American Home Assurance Company: Jeffrey D. Laveson Linda B. Clapham Carney Badley Spellman, PS 701 Fifth Avenue, Suite 3600 Seattle, WA 98104-7010 Laveson@carneylaw.com Clapham@carneylaw.com	Attorney for Providence Washington Insurance Company: David M. Schoegg Stephania Denton David W. Howenstine Lane Powell PC 1420 Fifth Avenue, Suite 4200 Seattle, WA 98111-9402 schoeggld@lanepowell.com dentons@lanepowell.com howenstined@lanepowell.com
Attorney for Hartford Accident and Indemnity Company: Carl E. Forsberg Kenneth J. Cusack Forsberg & Umlauf, P.S. 901 Fifth Avenue, Suite 1400 Seattle, WA 98164 cforsberg@forsberg-umlauf.com kcusack@forsberg-umlauf.com	Attorney for Travelers Indemnity Company and Aetna Casualty and Surety Company: Everett W. Jack, Jr. Mr. Steven P. Caplow Davis Wright Tremaine LLP 1300 SW 5 th Ave., Ste 2400 Portland, OR 97201-5682 everettjack@dwt.com stevecaplow@dwt.com

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 6th day of August, 2015

By s/Kathy Jacobson
Kathy Jacobson

DECLARATION OF JOHN C. BJORKMAN
IN SUPPORT OF KING COUNTY'S MOTION
FOR SUMMARY JUDGMENT ON
BAD FAITH FAILURE TO DEFEND
AGAINST DEFENDANT PROVIDENCE - 5